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CALIFORNIA

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

PROTON CORPORATION, a California
corporation

Plaintiff

vs.

RDI VIDEO SYSTEMS, a California
corporation, RICHARD G. DYER aka
RICK DYER; and DOES 1 through 20,
inclusive

Defendants

NO.

539923

COMPLAINT FOR BREACH OF
WRITTEN CONTRACT, MONEY
PAID, INTENTIONAL AND
NEGLIGENT MISREPRESENTATIONS,
CONVERSION, FRAUD BASED
UPON SUPPRESSION OF FACTS
AND PROMISE MADE WITHOUT
INTENT TO PERFORM,
AND DAMAGES

Plaintiff alleges:

FIRST CAUSE OF ACTION

(Breach of Written Contract)

1. Plaintiff is and at all times herein mentioned was
a corporation organized and existing under the laws of the State
of California, with its principal place of business in the County
of Los Angeles.

2. Plaintiff is informed and believes and thereupon
alleges that at all times herein mentioned Defendant RDI VIDEO
SYSTEMS ("RDI") was a corporation organized and existing under
the laws of the State of California, with its principal place of

1 business in the County of San Diego.

2 3. Plaintiff is informed and believes and thereupon
3 alleges that at all times herein mentioned Defendant RICK DYER
4 ("DYER") was a resident of the City and County of San Diego,
5 California.

6 4. Plaintiff is ignorant of the true names and capac-
7 ities of Defendants sued herein as DOES 1 through 20, inclusive,
8 and therefore sues these Defendants by such fictitious names.
9 Plaintiff will amend this Complaint to allege their true names
10 and capacities when the same are ascertained.

11 5. Plaintiff is informed and believes and thereupon
12 alleges that at all times herein mentioned DYER and DOES 1
13 through 4 were the sole officers and directors, and either sole
14 or controlling shareholders, of RDI.

15 6. Plaintiff is informed and believes and thereupon
16 alleges that at all times herein mentioned there existed a unity
17 of interest and ownership between DYER and DOES 1 through 4, and
18 RDI, such that any individuality and separateness between DYER
19 and DOES 1 through 4 and RDI have ceased, and DYER and DOES 1
20 through 4 are the alter ego of RDI, in that:

21 (a) Plaintiff is informed and believes and there-
22 upon alleges that DYER and DOES 1 through 4 exercised complete
23 control and dominance over RDI to such an extent that any in-
24 dividuality or separateness of RDI from DYER and DOES 1 through
25 4, at all times herein mentioned, did not exist; and/or

26 (b) Plaintiff is informed and believes and there-
27 upon alleges that RDI was and continues to remain to be so in-
28 adequately capitalized that, compared with the business to be

1 done by RDI and the risk of loss attendant thereon, its capitaliza-
2 tion was illusory; and/or

3 (c) Plaintiff is informed and believes and there-
4 upon alleges that DYER and DOES 1 through 4 have advised members
5 of the public generally and Plaintiff specifically during the
6 period of November 1984 through January 1985 that RDI was a
7 financially solvent corporation when in fact at all times during
8 said period of time DYER and DOES 1 through 4 knew and were
9 aware that RDI was suffering substantial financial problems and
10 was unable to pay its debts.

11 7. Plaintiff is informed and believes and thereupon
12 alleges that adherence to the fiction of the separate existence
13 of RDI as an entity distinct from DYER and DOES 1 through 4
14 would permit an abuse of the corporate privilege and would promote
15 injustice, in that RDI through its representatives DYER and
16 DOES 1 through 4 represented to Plaintiff during the period of
17 time of November 1984 through January 1985 that RDI was a
18 financially solvent corporation able to pay its obligations when
19 in fact at all times during said period of time DYER and DOES 1
20 through 4 knew that RDI was suffering substantial financial prob-
21 lems and was unable to meet its financial obligations.

22 8. On or about November 12, 1984, Plaintiff and RDI
23 entered into a written agreement concerning the sharing of cer-
24 tain expenses which were to be incurred during the Winter Consumer
25 Electronics Show in Las Vegas, Nevada, to be held in January
26 1985. A copy of said written agreement is attached hereto as
27 Exhibit "A" and hereby incorporated by this reference.

28 ...

1 9. Plaintiff has performed all conditions, obligations
2 and promises required by it to be performed under the terms of
3 the written agreement, including paying for expenses and advanc-
4 ing on behalf of RDI expenses incurred at the Winter Consumer
5 Electronics Show, as more specifically set forth on the attached
6 Exhibit "A". Pursuant to said written agreement, Plaintiff made
7 payments totaling \$15,133.11 on behalf of RDI.

8 10. Demand for payment of the sum of \$15,133.11 has
9 been made upon RDI, however, RDI has failed and refused to pay
10 said sum, or any part thereof, and there is now due, owing and
11 unpaid from Defendants to Plaintiff the sum of \$15,133.11, to-
12 gether with interest thereon at the legal rate from January 31,
13 1985.

14 SECOND CAUSE OF ACTION

15 (Money Paid)

16 11. Plaintiff hereby realleges and incorporates by
17 this reference paragraphs 1 through 7 of the First Cause of
18 Action.

19 12. Within the last two years, within San Diego County,
20 California, Defendant RDI became indebted to Plaintiff in the
21 sum of \$15,133.11 for money paid, laid out, and expended for
22 RDI at its instance and request.

23 13. Neither the whole nor any part of the above sum has
24 been paid, although payment has been demanded, leaving a balance
25 due, owing, and unpaid to Plaintiff from Defendants in the sum
26 of \$15,133.11, together with interest thereon at the legal rate
27 from January 31, 1985.

28 ...

1 THIRD CAUSE OF ACTION

2 (Intentional Misrepresentations)

3 14. Plaintiff hereby realleges and incorporates by
4 this reference paragraphs 1 through 8 of the First Cause of
5 Action.

6 15. Commencing on or about November 12, 1984, and
7 continuing at all times through and including January 31, 1985,
8 Plaintiff is informed and believes and thereupon alleges that
9 RDI and DYER falsely and fraudulently represented to Plaintiff
10 as follows:

11 (a) That RDI was a financially solvent corporation
12 able to meet its financial obligations;

13 (b) That RDI would pay its share of expenses in-
14 curred as a result of execution of the attached Exhibit "A";

15 (c) That during the month of January 1985, while
16 expenses were being incurred at the Winter Consumer Electronics
17 Show that RDI remained financially solvent and would pay all sums
18 of money expended by Plaintiff on behalf of RDI; and

19 (d) That at the conclusion of the Winter Consumer
20 Electronics Show that RDI would return all equipment loaned by
21 Plaintiff to RDI.

22 16. Plaintiff is informed and believes and thereupon
23 alleges that the representations set forth above were in fact
24 false and that the true facts were that at all times since
25 November 12, 1984, RDI has been in financial difficulty and
26 both RDI and DYER knew at all times since November 12, 1984
27 that RDI could not meet its current financial obligations, would
28 not be able to pay Plaintiff pursuant to the terms of the

1 attached Exhibit "A", would not be able to pay Plaintiff expenses
2 incurred at the Winter Consumer Electronics Show, and would not
3 be in a position to return to Plaintiff all items of personal
4 property loaned by Plaintiff to Defendant at the Winter Consumer
5 Electronics Show.

6 17. Plaintiff at the time these representations were
7 made by RDI and DYER and at the time Plaintiff took the actions
8 herein alleged was ignorant of the falsity of Defendants' repre-
9 sentations and believed them to be true. In reliance on these
10 representations, Plaintiff was induced to and did execute the
11 attached Exhibit "A", incur expenses on behalf of RDI at the
12 Winter Consumer Electronics Show in Las Vegas, Nevada in January
13 1985, all of which expenses have been paid by Plaintiff, and
14 loaned items of personal property to RDI at the Winter Consumer
15 Electronics Show, some of which items as of the date of filing
16 of this Complaint have not been returned. Had Plaintiff known
17 the actual facts it would not have taken such action. Plaintiff's
18 reliance on RDI's and DYER's representations was justified in
19 that Plaintiff had no information nor had any way of obtaining
20 information concerning the financial difficulties RDI was suf-
21 fering.

22 18. As a proximate result of DYER's and RDI's fraud and deceit
23 and the facts herein alleged, Plaintiff has been damaged in the
24 sum of \$16,187.11.

25 19. In doing the acts herein alleged, Defendants
26 acted with oppression, fraud, and malice, and Plaintiff is en-
27 titled to punitive damages in the sum of \$100,000.00.

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1 25. At all times herein mentioned, the personal prop-
2 erty described in the preceding paragraph had a value of
3 \$1,054.00.

4 26. On or about November 20, 1984, and continuing through
5 on or about January 11, 1985, Plaintiff loaned the above-mentioned
6 personal property to RDI for use during the Winter Consumer
7 Electronics Show held in Las Vegas, Nevada, in January 1985.
8 The equipment was loaned with the express understanding that
9 at the conclusion of the show the same would be returned by RDI
10 to Plaintiff.

11 27. On or about January 11, 1985, Defendants wrongfully
12 and unlawfully converted the above-described personal property
13 belonging to Plaintiff by failing and refusing to return said
14 property to Plaintiff at the conclusion of the Winter Consumer
15 Electronics Show.

16 28. Although Plaintiff has demanded the return of
17 said personal property from Defendants, Defendants have failed
18 and refused, and continue to fail and refuse to return said
19 equipment or any part thereof.

20 29. As a proximate result of Defendants' conversion,
21 Plaintiff has suffered damages in the sum of \$1,054.00.

22 30. Between the time of Defendants' conversion and
23 the filing of this action, Plaintiff has expended time and money
24 in pursuit of the converted property, all to Plaintiff's further
25 damage in a sum according to proof at the time of trial.

26 31. The aforementioned acts of Defendants were will-
27 ful, wanton, malicious and oppressive, and justify the awarding
28 of exemplary and punitive damages in the sum of \$100,000.00.

SIXTH CAUSE OF ACTION

(Fraud Based Upon Suppression of Facts)

32. Plaintiff hereby realleges and incorporates by this reference paragraphs 1 through 8 of the First Cause of Action.

33. At the time of executing the written agreement, Exhibit "A" hereto, Defendants were aware that Plaintiff would be incurring expenses for the benefit of RDI and that RDI, pursuant to said written agreement, would have an obligation to repay said expenses. Furthermore, commencing on or about November 12, 1984, Defendants orally requested Plaintiff to pay certain expenses at the Winter Consumer Electronics Show in Las Vegas, expressly or impliedly representing that RDI would repay said sums.

34. Plaintiff is informed and believes and thereupon alleges that at the time of execution of the written agreement, Exhibit "A" hereto, and at the time that expenses were incurred in January 1985 at the Winter Consumer Electronics Show, that Defendants were aware that RDI was suffering financial difficulties and was unable to meet its current financial obligations. At all times from November 12, 1984 continuing through January 31, 1985, Defendants suppressed from Plaintiff the existence of the financial difficulties RDI was suffering. The suppression of facts when made were likely to mislead Plaintiff and did in fact mislead Plaintiff into believing that RDI was financially solvent and able to meet the financial obligations which were going to be incurred and which were incurred in January 1985 at the Winter Consumer Electronics Show.

1 35. Plaintiff is informed and believes and thereupon
2 alleges that the failures to disclose information and suppressions
3 of information hereinabove alleged to have been made by Defendants
4 RDI and DYER were made with the intent to induce Plaintiff to
5 act in the manner herein alleged in reliance thereon.

6 36. Plaintiff, at the time these failures to disclose
7 and the suppression of facts occurred, and at the time Plaintiff
8 took the actions herein alleged, was ignorant of the existence
9 of the facts which Defendants suppressed and failed to disclose.
10 If Plaintiff had been aware of the existence of the facts not
11 disclosed by Defendants, Plaintiff would not have executed the
12 attached Exhibit "A" and would not have incurred expenses on
13 behalf of RDI. Plaintiff's reliance on Defendants' representa-
14 tions was justified, in that Plaintiff had no information nor
15 had any way of obtaining information concerning the financial
16 difficulties RDI was suffering.

17 37. As a proximate result of DYER's and RDI's fraud
18 and deceit and the facts herein alleged, Plaintiff has been
19 damaged in the sum of \$16,187.11.

20 38. In doing the acts herein alleged, Defendants
21 acted with oppression, fraud, and malice, and Plaintiff is en-
22 titled to punitive damages in the sum of \$100,000.00.

23 SEVENTH CAUSE OF ACTION

24 (Fraud Based Upon Promise
25 Made Without Intention to Perform)

26 39. Plaintiff hereby realleges and incorporates by
27 this reference paragraphs 1 through 8 of the First Cause of
28 Action.

...

1 40. Commencing on or about November 12, 1984 and
2 continuing at all times through and including January 31, 1985,
3 Defendants DYER and RDI promised Plaintiff that if Plaintiff
4 would execute the attached Exhibit "A" and advance certain costs
5 and expenses for the benefit of RDI at the Winter Consumer
6 Electronics Show in Las Vegas, Nevada, in January 1985, that
7 RDI would pay for its share of the expenses.

8 41. Plaintiff is informed and believes and thereupon
9 alleges that at the time Defendants made the promise to Plain-
10 tiff, Defendants had no intention of performing the same.

11 42. Plaintiff is informed and believes and thereupon
12 alleges that the promise was made by Defendants with the intent
13 to induce Plaintiff to enter into the attached Exhibit "A" and
14 advance costs and expenses for the benefit of RDI at the Winter
15 Consumer Electronics Show in Las Vegas, Nevada, in January 1985.

16 43. Plaintiff, at the time this promise was made,
17 and at the time Plaintiff took the actions herein alleged, was
18 ignorant of Defendants' secret intention not to perform, and
19 Plaintiff could not, in the exercise of reasonable diligence,
20 have discovered Defendants' secret intention. In reliance on
21 the promise of Defendants, Plaintiff executed the attached
22 Exhibit "A" and advanced costs and expenses for the benefit of
23 RDI at the Winter Consumer Electronics Show in Las Vegas, Nevada,
24 in January 1985. If Plaintiff had known the actual intention
25 of Defendants, Plaintiff would not have taken such action.

26 44. Defendants have failed to abide by their promise
27 by refusing to pay Plaintiff for the sums of money advanced
28 for the benefit of RDI, pursuant to the attached Exhibit "A" and

1 pursuant to the promises made by Defendants, all to Plaintiff's
2 damage in the sum of \$16,187.11.

3 45. In doing the acts herein alleged, Defendants
4 acted with oppression, fraud, and malice, and Plaintiff is en-
5 titled to punitive damages in the sum of \$100,000.00.

6 WHEREFORE, Plaintiff prays judgment against Defendants,
7 and each of them, as follows:

8 FIRST AND SECOND CAUSES OF ACTION

- 9 1. For damages in the sum of \$15,133.11, together
10 with interest thereon at the legal rate from January 31, 1985;
11 2. For costs of suit herein incurred; and
12 3. For such other and further relief as this Court
13 deems fair and proper.

14 THIRD, FOURTH, SIXTH AND SEVENTH
15 CAUSES OF ACTION

- 16 1. For damages in the sum of \$16,187.11, together
17 with interest thereon at the legal rate from January 31, 1985;
18 2. For punitive damages in the sum of \$100,000.00;
19 3. For costs of suit herein incurred; and
20 4. For such other and further relief as this Court
21 deems fair and proper.

22 FIFTH CAUSE OF ACTION

- 23 1. For damages in the sum of \$1,054.00, together
24 with interest thereon at the legal rate from January 31, 1985;
25 2. For additional damages to compensate Plaintiff
26 for time and energy spent in attempting to recover its personal
27 property, in an amount subject to proof at the time of trial;
28 ...

1 3. For punitive and exemplary damages in the sum
2 of \$100,000.00;

3 4. For costs of suit herein incurred; and

4 5. For such other and further relief as this Court
5 deems fair and proper.

6 DATED: April 13, 1985

GRANT, BESHEARS & WILLIAMS

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8 By: Miles D. Grant
9 MILES D. GRANT
10 Attorneys for Plaintiff
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PROTON

November 12, 1984

RDI Video Systems
3261 Cosmos Court
Carlsbad, California 92008

Attention: Rick Dyer, President

Dear Rick:

The purpose of this letter is to confirm certain business arrangements between Proton and RDI, as follows:

1. The following activities will be undertaken at the Winter Consumer Electronics Show ("the Show") to be held in Las Vegas, Nevada in January of 1985:

A. RDI's products will be displayed in Proton's booth at the Show. If any additions to the booth (e.g. pedestals for product display) are required in order to accommodate RDI, the cost of such additions will be borne by RDI. Any equipment or materials paid for by RDI shall be considered the property of RDI and may be removed from the booth by RDI at the conclusion of the Show.

B. A professional will be engaged to present the products of both Proton and RDI at the booth. An audio/visual presentation also will be prepared for use in the booth, which will feature the products of both Proton and RDI. The cost of the professional and the audio/visual presentation will be shared equally by Proton and RDI.

C. Except as provided above, all costs associated with the booth will be borne by Proton.

D. Prior to the Show, Proton and RDI will hold a joint press party and a joint sales meeting. The two companies also will share a hospitality suite at the Desert Inn Hotel immediately prior to and during the Show. All expenses incurred in connection with the activities described in this paragraph (including but not limited to food, beverage and space charges) will be shared on a 70/30 basis, with Proton being responsible for 70% and RDI being responsible for 30%.

E. RDI will make no arrangements with any person or entity other than Proton, for the display or use of its "Halcyon" video game during the show. Any display or use by Proton of the "Halcyon" video game during the Show shall be without charge to Proton.

2. You have indicated that RDI would like to engage all or most of Proton's independent sales representatives to act as sales representatives for RDI's consumer products. It is understood that the terms of all such engagements shall be negotiated directly between RDI and such sales representatives.

3. Subsequent to the Show, Proton may elect to provide marketing assistance to RDI from time to time, as mutually agreed by the parties. Unless otherwise agreed by the parties in writing, such assistance shall be provided without charge, and Proton shall have the right to cease rendering such assistance at any time, with or without advance notice to RDI. It is understood that all marketing decisions pertaining to RDI's business shall be within the sole discretion of RDI.

4. Subsequent to the Show, Proton and RDI may elect to engage in joint promotional efforts for their respective products. The terms of such joint promotions shall be subject to mutual written agreement of the parties.

5. Each party is an independent contractor and shall have no express or implied right or authority to assume or create any obligation on behalf of the other. Except as otherwise provided above or as mutually agreed in writing, each party shall bear all expenses associated with its business, and neither party shall have any right in or to the income or profits derived from the other party's business.

6. This letter sets forth our entire agreement regarding its subject matter, and supercedes all prior or contemporaneous oral or written understandings. This letter agreement may not be modified, amended or supplemented except by a written instrument signed by both parties.

Please sign the enclosed copy of this letter and return it to me in order to confirm our understanding.

Very truly yours,

PROTON CORPORATION

BY: 

Jay S. Eagle, Executive Vice President

Read, acknowledged and agreed to this 19 day of November, 1984.

RDI VIDEO SYSTEMS

BY: 

Rick Dyer, President